MOTOR INSURERS' BUREAU OF SINGAPORE v. PACIFIC & ORIENT INSURANCE CO BHD

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD KAMAL MD SHAHID J
[ORIGINATING SUMMONS NO: WA-24-10-02-2023]
5 FEBRUARY 2024

Abstract – *In considering the registration and enforcement of a foreign judgment, the principles of Malaysian public policy must always be given prominence. The court should take into consideration the law, Government policy, moral values and all other prevailing relevant factors. The registration and enforcement of a foreign judgment that is against any legal framework or policy must be rejected. Likewise, if the enforcement of the foreign judgment would rewrite fundamental policies already in place or sought to impose the law of the country from where the judgment was obtained, such application must also be rejected.*

INSURANCE: *Motor insurance – Insurer's liability to satisfy judgment – Claim by Motor Insurers' Bureau of Singapore ('MIB') to recover sum paid to injured pillion rider of motorcycle – MIB obtained judgment in Singapore against Malaysian insurer – Whether insurer in Malaysia liable to repay judgment sum – Whether imposition of mandatory passenger cover in direct conflict with Road Transport Act 1987 ('RTA') – Whether enforcement of Singapore judgment contravenes Malaysian public policy – Whether in direct conflict with legislative framework and policy of RTA*

CIVIL PROCEDURE: *Judgment – Reciprocal enforcement of judgment – Claim by Motor Insurers' Bureau of Singapore ('MIB') to recover sum paid to injured pillion rider of motorcycle – MIB obtained registration of Singapore judgment against Malaysian insurer – Application to set aside order and registration of Singapore judgment – Whether Malaysian insurer liable to repay judgment sum – Whether in direct conflict with legislative framework and policy of Road Transport Act 1987 – Whether amounts to 'backdoor' imposition of Singapore law on Malaysian motor insurers – Whether registration and enforcement of Singapore judgment contravenes Malaysian public policy – Reciprocal Enforcement of Judgments Act 1958, ss. 4 & 5(1) – Rules of Court 2012, O. 67*

The plaintiff was a non-profit organisation that operates a scheme funded by all general insurance companies and Lloyd's underwriters transacting compulsory motor vehicle insurance business in Singapore. The defendant was an authorised insurer under the Road Transport Act 1987 ('RTA') and was only authorised to carry on its business in Malaysia. The defendant did not have any business or presence in Singapore. All Malaysian motor insurers are members of the Motor Insurers' Bureau of West Malaysia (MIBWM), established on 15 January 1968, as a social scheme and

a central fund financed by all Malaysian motor insurers, to provide compensation to road traffic accident victims in Malaysia who are unable to recover compensation due to the absence of an effective insurance policy. Shortly after its launch, MIBWM encountered issues arising from accidents in Malaysia caused by motor vehicles registered in Singapore and insured by Singapore insurers, as compensation for victims could not be readily obtained from these Singapore insurers. To resolve this problem and to facilitate the free flow of traffic between Singapore and West Malaysia, MIBWM entered into individual agreements with Singapore motor insurers which were not licensed to conduct insurance business in Malaysia. Under these agreements, Singapore motor insurers agreed to be bound by MIBWM's articles of association and MIBWM's agreement with the Minister of Transport. Singapore motor insurers also agreed to reimburse MIBWM, if MIBWM had to pay claims due to the negligent use of Singapore-registered motor vehicles in Malaysia. To give effect to its function and framework, the plaintiff and MIBWM both executed different sets of agreements governing compensation of third-party victims of road accidents in their respective countries.

On or around 21 May 2018, a Malaysian individual, Subramaniam, commenced an action at the Singapore High Court ('Suit 528') for damages for personal injuries and other consequential losses against, among other things, the rider of motorcycle No. JNH 8592 ('motorcycle'), one Prem Kumar Venu ('Prem'). Subramaniam was a pillion rider on the motorcycle that Prem was riding when he was involved in a road traffic accident in Singapore. At the time of the accident, the defendant had a policy insurance over the said motorcycle which did not include passenger cover. The plaintiff intervened in Suit 528 and a final judgment was entered by consent for Subramaniam against Prem for SGD985,000. The plaintiff subsequently filed a suit against the defendant at the Singapore High Court to recover S$985,000, being monies paid by the plaintiff to Subramaniam. Although the Singapore suit cause papers were served on the defendant, the defendant did not enter an appearance and did not submit to the jurisdiction of the Singapore courts. Subsequently, the Singapore High Court issued the judgment ('Singapore judgment'), which was sent by the plaintiff to the defendant. The plaintiff thereafter successfully applied to register the Singapore judgment pursuant to s. 4 of the Reciprocal Enforcement of Judgments Act 1958 ('REJA') and O. 67 of the Rules of Court 2012 ('ROC') and proceeded to serve encl. 5 and the notice of registration of foreign judgment on the defendant. Hence, the application by the defendant to set aside encl. 5 and the registration of the Singapore judgment pursuant to s. 5(1) of the REJA and O. 67 r. 9 of the ROC. The main contention of the defendant was that the enforcement of the Singapore judgment and order for registration was against the public policy in Malaysia. The plaintiff, on the other hand, submitted that: (i) the enforcement of the Singapore judgment was not against Malaysian public policy. The provision of passenger liability under the

motor insurance bureau scheme is, in fact, consistent with the Malaysian public policy; and (ii) the defendant was barred *by res judicata* and issues estoppel to relitigate the issues raised in previous proceedings.

Held (allowing defendant's application to set aside Singapore judgment and order for registration):

(1) In considering the registration and enforcement of a foreign judgment, the Malaysian public policy, as understood and applied by the Malaysian court, must be taken into account. In determining what constitutes Malaysian public policy, a Malaysian court should consider: (a) Malaysian law; (b) the policy of the law; (c) the policy in relation to the administration of the law; (d) fundamental principles of substantive and procedural law and justice; (e) Malaysian government policy; (f) Malaysian moral values; (g) whether the enforcement is clearly injurious to the public good; (h) whether the enforcement is wholly offensive to the ordinary reasonable and fully informed member of the public; and (i) all other relevant factors prevailing in Malaysia. Based on the cause papers and submissions of the parties, the registration and enforcement of the Singapore judgment would contravene Malaysian public policy. (paras 26 & 27)

(2) Under its legislative framework and policy, the RTA imposes a mandatory statutory duty on users or owners of motor vehicles to obtain an insurance policy to cover third party risks. However, this duty is not imposed on insurers. Users or owners of motor vehicles are also not compelled to insure against injury to passengers, except in limited circumstances. Therefore, passengers have to assess for themselves the risks of taking private transportation. Hence, it is not the duty of a Malaysian insurer under the Malaysian law to pay for passenger risks which the insured himself has chosen not to cover and pay an additional premium for, as in the present case. Since passenger cover was not part of the insurance policy, the defendant was not liable to compensate any injured passenger or pillion under the insurance policy and the RTA. This was consistent with the proposition that the contractual relationship between an insurer and the insured for motor insurance is governed by the motor insurance policy and the RTA. If the Singapore judgment was enforced, this fundamental legal principle would be contravened. (paras 29, 32 & 41-44)

(3) The enforcement of the Singapore judgment would contravene Malaysian public policy as the imposition of mandatory passenger cover is in direct conflict with the RTA which governs the entire Malaysian motor vehicle insurance industry. It would violate the statutory freedom of choice given by the RTA to Malaysian insureds to procure passenger cover, effectively making it mandatory despite not being required by the RTA. It would set a precedent and allow the plaintiff to commence

similar proceedings against all Malaysian motor insurers, regardless of whether or not insureds have taken passenger cover. It would also shift the onus of obtaining passenger cover from insureds to insurers, thereby undermining the freedom of insureds to make their own choices and potentially limiting the travel of Malaysian-registered vehicles to Singapore, the exact opposite of the legislative framework and policy of the RTA and amounts to the 'backdoor' imposition of Singapore law on Malaysian motor insurers. (para 37)

(4) The Singapore judgment, if enforced, would be transposed into a Malaysian judgment and given effect, thereby imposing Singapore law on Malaysian insurers through the 'backdoor' and frustrating the legislative intent behind the RTA. Further, the enforcement of the Singapore judgment would force the defendant to abide by the terms of the supplemental agreement which the plaintiff signed with its own members (which are all Singapore motor insurers) and with two other Malaysian insurers (which transacted insurance business in Singapore), but not with the defendant. The plaintiff, through the enforcement of the Singapore judgment, should not be allowed to violate the doctrine of privity of contract and force the defendant to abide by the terms of the supplemental agreement, to which the defendant was not a party. (paras 40, 55 & 56)

(5) Foreign judgments from reciprocal countries (including Singapore), while deserving due recognition, could not be mechanically enforced without an assessment of their alignment with Malaysian public policy. The defendant's statutory public policy defence under s. 5(1)(a)(v) of the REJA pertaining to the enforcement of the Singapore judgment in Malaysia, could not possibly amount to re-litigating the merits of the Singapore judgment, or else no defendant will ever be able to raise and argue the statutory public policy defence. The issues raised by the defendant were not contractual issues *per se*, but instead, pertained to the public policy implications arising from the enforcement of the Singapore judgment in Malaysia. The registration and enforcement of the Singapore judgment were contrary to the Malaysian public policy. (paras 70, 72-74 & 76)

Case(s) referred to:

Banque Nasionale De Paris v. Wuan Swee May & Anor [2000] 4 CLJ 387 HC ***(refd)***

Jan De Nul (Malaysia) Sdn Bhd & Anor v. Vincent Tan Chee Yioun & Anor [2019] 1 CLJ 1 FC ***(refd)***

Motor Insurers' Bureau Of Singapore v. AmGeneral Insurance Bhd [2020] 3 CLJ 581 HC ***(refd)***

Persatuan Insurans Am Malaysia (PIAM) & Ors v. Competition Commission [2022] 9 CLJ 268 ***(refd)***

Syarikat Sebati Sdn Bhd v. Pengarah Jabatan Perhutanan & Anor [2019] 3 CLJ 157 FC ***(refd)***

Tetuan Wan Shahrizal, Hari & Co v. PP [2023] 4 CLJ 843 FC ***(refd)***

Legislation referred to:
Reciprocal Enforcement of Judgments Act 1958, ss. 4, 5(1)(a)(v)
Road Traffic Ordinance 1958, s. 75(1)(ii)
Road Transport Act 1987, ss. 90(1), 91(1)
Rules of Court 2012, O. 67 r. 9

For the plaintiff - Chong Yee Leong, Kwong Chiew Ee & Cassandra Oh; M/s Rahmat Lim & Partners
For the defendant - Dhinesh Bhaskaran & Wong Jia Jing; M/s Shearn Delamore & Co

Reported by S Barathi

JUDGMENT

Ahmad Kamal Md Shahid J:

Introduction

[1] The defendant filed a notice of application dated 3 April 2023 (encl. 8) under s. 5(1) of the Reciprocal Enforcement of Judgments Act 1958 (REJA) and O. 67 r. 9 of the Rules of Court 2012 (ROC) to obtain the following orders and reliefs:

(i) the *ex parte* order dated 23 February 2023 and the registration of the judgment of the High Court of the Republic of Singapore dated 1 November 2022 in Civil Suit No: HC/OA 461/2022 (Singapore judgment) be set aside.

(ii) the costs of this application be borne by the plaintiff; and

(iii) such further or other relief as this Honourable Court deems fit.

[2] In essence, the defendant is seeking to set aside the registration of the Singapore judgment under the order for registration, on grounds of breach of public policy in Malaysia.

[3] In opposing the defendant's application, the plaintiff contends that:

(i) the enforcement of the Singapore judgment is not against Malaysian public policy. The provision of passenger liability under the motor insurance bureau scheme is, in fact, consistent with the Malaysian public policy; and

(ii) the defendant is barred by *res judicata* and issues estoppel to relitigate the issues raised in previous proceedings.

[4] After the hearing, I allowed the defendant's application (encl. 8). This judgment contains the full reasons for my decision.

Backgrounds Facts

[5] The narration of the background facts herein is adopted with and/or without modification from the written submissions of the parties and can be summarised as follows:

A (i) the plaintiff is a non-profit organisation that operates a scheme funded by all general insurance companies and Lloyd's underwriters transacting compulsory motor vehicle insurance business in Singapore. The primary function of the plaintiff in Singapore is to ensure that victims of road traffic accidents are not without recourse, in the event that:

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(a) the driver of the motor vehicle who injures a victim cannot be traced; or

(b) the driver of a vehicle who injures a victim is without effective insurance to cover his liability and is unable to compensate the victim.

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(ii) the defendant is a subsidiary of Pacific & Orient Berhad, a public company incorporated in Malaysia and listed on the main market of Bursa Malaysia;

D (iii) the defendant is licensed by the Minister of Finance under the Financial Services Act 2013 to carry on general insurance business in Malaysia (including motor insurance), and is regulated by Bank Negara Malaysia (BNM);

E (iv) the defendant is only authorised to carry on its insurance business in Malaysia. Therefore, the defendant cannot carry on its business outside Malaysia, and does not have any business or presence in Singapore;

(v) the defendant is an authorised insurer under the Road Transport Act 1987 (RTA 1987). The insurance policies issued by the defendant are therefore governed by the RTA 1987;

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(vi) all Malaysian motor insurers (including the defendant) are members of the Motor Insurers' Bureau of West Malaysia (MIBWM);

G (vii) MIBWM was established on 15 January 1968 as a social scheme and a central fund financed by all Malaysian motor insurers, to provide compensation to road traffic accident victims in Malaysia who are unable to recover compensation due to the absence of an effective insurance policy;

H (viii) shortly after its launch, MIBWM encountered issues arising from accidents in Malaysia caused by motor vehicles registered in Singapore and insured by Singapore insurers, as compensation for victims could not be readily obtained from these Singapore insurers;

(ix) to resolve this problem and to facilitate the free flow of traffic between Singapore and West Malaysia, MIBWM entered into individual agreements with Singapore motor insurers which were not licensed to conduct insurance business in Malaysia;

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(x) under these agreements, Singapore motor insurers agreed to be bound by MIBWM's Articles of Association and MIBWM's agreement with the Minister of Transport. Singapore motor insurers also agreed to reimburse MIBWM, if MIBWM had to pay claims due to the negligent use of Singapore-registered motor vehicles in Malaysia; and

(xi) to give effect to its function and framework, the plaintiff and MIBWM both executed different sets of agreements governing compensation of third party victims of road accidents in their respective countries.

The Principal Agreement

(xii) the plaintiff was subsequently established on 25 January 1975, modeled on MIBWM at that time.

(xiii) On 22 February 1975, the plaintiff and the Singapore Minister of Finance entered into an agreement (principal agreement) to implement a scheme to secure compensation for third party victims of road accidents in Singapore in the following instances, namely;

(a) where, notwithstanding the Singapore Motor Vehicles (Third-Party Risks and Compensation) Act (MVA) (Chapter 88) relating to compulsory insurance, the victim is deprived of compensation by the absence of insurance or effective insurance; and

(b) where the driver responsible for the accident cannot be traced.

(xiv) under the principal agreement, the plaintiff was obliged to compensate the victim of a road accident only if the liability was required to be insured by Chapter 88, including any statutory modifications thereto or any re-enactment thereof;

The Memorandum of Agreement (MOA)

(xv) on the same day (22 February 1975), the plaintiff and every insurer and Lloyds underwriter transacting compulsory motor insurance business in Singapore entered into the MOA, which specifies when a Singapore insurer is liable to compensate victims of a road accident. The following provisions of the MOA are relevant:

(a) clause 3(1) states as follows:

> If a Judgment is obtained in Singapore against any person **(the Judgment Debtor) in respect of liability required to be insured by the Compulsory Insurance Legislation** the Insurer Concerned will satisfy the Original Judgment Creditor if and to the extent that the Judgment has not

A been satisfied by the Judgment Debtor within twenty-eight days from the date upon which the person in whose favour it was given is entitled to enforce it

(emphasis added)

(b) clause 1 defines "insurer concerned" as follows:

B ... the Insurer who at the time of the accident which gave rise to a liability required to be insured by the Compulsory Insurance Legislation **was providing an insurance against such liability** in respect of the vehicle arising out of the use of which the liability of the Judgment Debtor was incurred ...

C (emphasis added)

(c) clause 1 further defines "compulsory insurance legislation" as follows:

the **Motor Vehicles (Third-Party Risks and Compulsory)** D **Act (Chapter 88)** and any statutory modifications thereto or any re-enactment thereof.

(emphasis added)

(d) under cl. 6, the plaintiff may satisfy any judgment under cl. 3, and shall be entitled to recover the same from the "insurer E concerned".

The Legal Obligations In Malaysia And Singapore

Malaysia

(xvi) at the time of the MOA (22 February 1975), the Malaysian F legislation governing compulsory motor insurance against third party risks arising out of the use of motor vehicles was the Road Traffic Ordinance 1958 (RTO 1958):

(a) the preamble stated as follows:

G An Ordinance to make provision for the regulation of motor vehicles and of traffic on roads and otherwise with respect to roads and vehicles thereon; **provision for the protection of third parties against risks arising out of the use of motor vehicles**, and to provide for the co-ordination and control of means of and facilities for transport.

H (emphasis added)

(b) section 75(1)(ii) stated as follows:

(1) In Order to comply with the requirements of this Part of this Ordinance a policy of insurance must be a policy which:

I (a) is issued by a person who is an authorised insurer within the meaning of this Part of this Ordinance; and

(b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle or land implement drawn thereby on a road:

Provided that such policy *shall not be required to cover*:

...

(ii) except in the case of a motor vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, *liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting on to or alighting from the motor vehicle at the time of the occurrence of the event out of which the claims arise*;

(emphasis added)

(xvii) therefore, under s. 75(1)(ii), except in the case of a motor vehicle in which passengers were carried for hire or reward or by reason of or under a contract of employment, a motor insurance policy was not required to cover passenger liability;

(xviii) the RTO 1958 was later repealed and replaced by the RTA 1987, which came into force on 1 January 1988, and contains the following provisions:

(a) section 90 imposes a statutory duty on the person who uses or causes or permits other persons to use a motor vehicle on the road, to ensure that there is in force a policy of insurance in respect of third party risks as required under Part IV;

(b) however, s. 91(1)(bb) (which is similar to s. 75(1)(ii) of the RTO 1958) states that a motor insurance policy shall not be required to cover passenger liability, except in the case of a motor vehicle in which passengers are carried for hire or reward or by reason of or under a contract of employment.

(xix) therefore, under both the RTO 1958 and the RTA 1987, a motor insurance policy is not required to cover passenger liability, except in the case of passengers being carried for hire or reward, or by reason of or under a contract of employment;

(xx) further, at the time of the MOA, all Malaysian motor insurance policies were governed by a fixed price tariff, and the terms and conditions contained in the policies were standard;

(xxi) as passenger cover is not mandatory in Malaysia, a standard motor vehicle policy issued by a Malaysian insurer does not cover passenger risks. Instead, the user or owner of the motor vehicle will have to procure separate cover at a separate premium to cover passenger risks. This will be added to the policy by an endorsement;

Singapore

Chapter 88

(xxii) under Chapter 88 (which was the legislation in force in 1975), it was not compulsory for owners or drivers of motor vehicles to cover passenger liability, except in the case of passengers being carried for hire or reward, or by reason of or under a contract of employment;

(xviii) therefore, the legal position on this issue was the same as that in Malaysia.

Chapter 189

(xxiv) through an amendment to Chapter 88, which came into force on 1 March 1981, it became mandatory in Singapore for owners and drivers of motor vehicles to obtain passenger cover. This amendment was included in the 1985 revised edition of the MVA, namely Chapter 189, which came into force on 30 March 1987;

(xxv) therefore, since 1 March 1981 the operative legal position in Singapore has been different from that in Malaysia.

The Relationship Between The Plaintiff And The Defendant

The Special Agreement

(xxvi) to recap, in 1975, the compulsory motor insurance regimes in Malaysia and Singapore under the RTO 1958 and Chapter 88 respectively were largely the same. Importantly, it was not mandatory in either country for an insured to procure cover for death or bodily injury to his passengers, except in specific instances;

(xxvii) against this backdrop, on 15 September 1975 the plaintiff and the defendant entered into an agreement (special agreement), whereby the defendant agreed to comply with every obligation imposed by the plaintiff's articles of association, the MOA and the principal agreement, as if the defendant was a member of the plaintiff;

(xxviii) the special agreement and the MOA did not require the defendant to provide passenger cover under its motor insurance policies. The defendant was only obliged to satisfy a judgment in respect of liability required to be insured by Chapter 88, if the defendant was an "insurer concerned" providing insurance against a liability required to be insured by Chapter 88 at the time of the accident;

(xxix) similar agreements were entered into by all the other Malaysian motor insurers at the time;

(xxx) these agreements (including the special agreement) were an attempt by the defendant and other Malaysian motor insurers to financially and morally, as responsible corporate citizens, perform a crucial function in coming to arrangements to satisfy judgments obtained by victims of accidents occurring in Singapore involving Malaysian-registered vehicles.

Subsequent Developments

(xxxi) in light of Chapter 189 (which came into force on 30 March 1987), on 24 September 1998 the following took place:

(i) the Singapore Minister of Finance entered into a supplement agreement with the plaintiff, whereby references to Chapter 88 in the principal agreement were replaced with Chapter 189.

(ii) likewise, the plaintiff entered into a supplement agreement with its members in Singapore (supplemental agreement), whereby references to Chapter 88 in the MOA were replaced with Chapter 189. Clause 1 states as follows:

> "The words "the Motor Vehicles (Third-Party Risks and Compensation) Act (Chapter 88)' **be deleted and replaced** wherever they appear in the 1975 Agreement [MOA] with the following words:
>
> > "the Motor Vehicles (Third-Party Risks and Compensation) Act (Chapter 189)".
>
> (emphasis added)

(xxxii) as a result, the plaintiff's arrangements with Singapore motor insurers would now operate against the backdrop of Chapter 189, which requires users or owners of motor vehicles to procure motor insurance policies in respect of passenger risks;

(xxxiii) only two Malaysian insurers, namely London & Pacific Insurance Company Berhad (Lonpac Insurance Bhd) and UMBC Insurance Berhad, entered into the supplemental agreement with the plaintiff and agreed to be bound by Chapter 189. It should be noted that both these insurers stood on a different footing from other Malaysian motor insurers at the time, as they were also authorised to transact insurance business in Singapore and had offices there. This has been admitted by the plaintiff;

(xxxiv) the defendant was never asked by the plaintiff to enter into the supplemental agreement;

(xxxv) on 28 January 2021, the plaintiff entered into a further supplemental agreement (further supplemental agreement) with Singapore insurers to amend the definition of "insurer concerned" in the MOA. Lonpac Insurance Bhd was the only Malaysian insurer that entered into the further supplemental agreement with the plaintiff; and

(xxxvi) once again, the defendant was never asked by the plaintiff to enter into the further supplemental agreement.

The Singapore Suit And The Singapore Judgment

[6] On or around 21 May 2018, a Malaysian individual named Subramaniam a/l Wingdesan (Subramaniam) commenced an action at the Singapore High Court in HC/S 528/2018 (Suit 528) for damages for personal injuries and other consequential losses against, among other things, the rider of motorcycle no JNH 8592 (the motorcycle), one Prem Kumar Venu (Prem).

[7] Subramaniam was a pillion rider on the motorcycle that Prem was riding on 27 July 2015 at or about 5.55pm which was involved in a road traffic accident along Tuas West Avenue 3 in Singapore (the accident). At the time of the accident, the defendant had a policy insurance over the said motorcycle which did not include passenger cover.

[8] The plaintiff intervened in Suit 528 and on 15 February 2022, a final judgment was entered by consent for Subramaniam against Prem for SGD985,000 as follows:

(i) general damages (inclusive of interest) at SGD565,000;

(ii) special damages (inclusive of interest) at SGD250,000;

(iii) costs of SGD120,000; and

(iv) disbursement of SGD50,000.

[9] On 16 August 2022, the plaintiff filed Suit No. HC/OA 461/2022 against the defendant in the Singapore High Court to recover a sum of S$985,000 (Singapore Suit), being monies paid by the plaintiff to Subramaniam, an injured pillion rider of a motorcycle.

[10] The plaintiff then contended that the defendant is liable to repay the sum to the plaintiff as an "insurer concerned" under the special agreement and the MOA.

[11] By an email dated 18 August 2022, the plaintiff's Singapore solicitors served the Singapore suit cause papers on the defendant's Malaysian solicitors, and asked whether the defendant would be instructing Singapore solicitors to accept service of process.

[12] By a letter dated 19 August 2022 to the plaintiff's Singapore solicitors, the defendant through its solicitors stated as follows: A

(i) the plaintiff was well aware that there is no liability for the defendant to repay the plaintiff in this instance;

(ii) the construction that the plaintiff sought to place on the special agreement and the MOA, and the basis on which the plaintiff sought to impose liability on the defendant, fell foul of Malaysian public policy; B

(iii) as Singapore Courts are not competent to adjudicate on Malaysian public policy, the defendant did not intend to participate in the Singapore suit; and C

(iv) the defendant's non-participation in the Singapore suit shall not be construed as an admission of the plaintiff, contentions and claims.

[13] By a letter dated 1 September 2022, the plaintiff's Singapore solicitors served the Singapore suit cause papers on the defendant. D

[14] By a letter dated 7 September 2022 to the plaintiff's Singapore solicitors, the defendant through its solicitors maintained that it is not liable to repay the plaintiff.

[15] The defendant did not enter an appearance in the Singapore suit and did not submit to the jurisdiction of the Singapore courts. E

[16] On 1 November 2022, the Singapore High Court issued the Singapore judgment, which was sent by the plaintiff's Singapore solicitors to the defendant by a letter dated 2 November 2022.

[17] On 3 February 2023, the plaintiff applied through encl. 1 to register the Singapore judgment pursuant to s. 4 of the REJA and O. 67 of the ROC. F

[18] On 23 February 2023, this Honourable Court granted encl. 1 and registered the Singapore judgment. Enclosure 5 and the notice of registration of foreign judgment dated 22 March 2023 were after that served on the defendant on 22 March 2023. G

[19] On 3 April 2023, the defendant filed encl. 8 to set aside encl. 5 and the registration of the Singapore judgment, pursuant to s. 5(1) of the REJA and O. 67 r. 9 of the ROC.

The Parties Contention H

[20] The main contention of the defendant is that the enforcement of the Singapore judgment and order for registration is against the public policy in Malaysia.

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[21] In gist, the plaintiff submits that:

(i) the enforcement of the Singapore judgment is not against Malaysian public policy. The provision of passenger liability under the motor insurance bureau scheme is, in fact, consistent with the Malaysian public policy; and

(ii) the defendant is barred by *res judicata* and issues estoppel to relitigate the issues raised in previous proceedings.

The Decision Of The Court

[22] The defendant's application to set aside the Singapore judgment and order for registration in the present case hinges on s. 5(1)(a)(v) of the REJA, which states as follows:

> 5. (1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment:
>
> (a) shall be set aside if the registration court is satisfied:
>
> (v) **that the enforcement of the judgment would be contrary to public policy in Malaysia**; or ...
>
> (emphasis added)

[23] The nub issue in the present case is whether the registration and enforcement of the Singapore judgment and order for registration is contrary to public policy in Malaysia.

[24] The concept of 'public policy' was explained by Abdul Hamid Mohamad J (as he then was) in *Banque Nasionale De Paris v. Wuan Swee May & Anor* [2000] 4 CLJ 387; [2000] 1 MLRH 563; [2000] 3 MLJ 587; [2000] 3 AMR 3404, as follows:

> [45] ... However, I wish to stress that *the public policy that should be considered is the public policy in Malaysia*. That is what s. 5(1)(a)(v) of the REJA says. Therefore, Malaysia courts should not rely too much on decisions of courts in other countries. Adopting the principles is not objectionable, but it should be done with discretion, *always bearing in mind the prevailing circumstances in this country*. But to adopt a specific ruling that a particular matter is or is not against the public policy in one country at that particular point of time under the circumstances then prevailing in that country as a point of law applicable all the time in this country is, in my view, not advisable.
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> ...
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> [47] *So, when a Malaysian court is considering the issue of public policy in Malaysia, it should look at Malaysian law, Malaysian government policy, Malaysia moral values and all other relevant factors then prevailing in Malaysia*, including what I have mentioned earlier ...

"Public policy" for the purpose of s. 5(1)(a)(v) of REJA is in my view, wider than "illegally". But I will not attempt to define it. I do no think it can be defined.
(emphasis added)

[25] Further, the Federal Court in *Jan De Nul (Malaysia) Sdn Bhd & Anor v. Vincent Tan Chee Yioun & Anor* [2019] 1 CLJ 1; [2019] 1 MLRA91; [2019] 2 MLJ 413; [2018] AMEJ 1445 held as follows:

> [55] ... As clearly stated by the Court of Appeal in *Sigur Ros* (with which we agree): *"The concept of public policy must be one taken in the higher sense where some fundamental principle of law or justice is engaged*, some element of illegality, where enforcement of the award involves clear injury to public good or the integrity of the court's process or powers will be abused.
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> ...
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> [58] The scope of public policy ground for setting aside an arbitral award could only be invoked in deserving case *ie*, in instances where it appears a violation of the most basic notions of morality and justice. *It covers fundamental principles of law and justice in substantive as well as procedural respect. Instances where the upholding of an arbitral award would shock the conscience, or clearly injurious to the public good, or wholly offensive to the ordinary reasonable and fully informed member of the public*, had been held by courts in various jurisdiction to fall within the category of public policy ground for setting aside an arbitral award ... .
>
> (emphasis added)

[26] Based on the above cases, this court is of the view that when considering the registration and enforcement of a foreign judgment the following principles of public policy must be taken into account:

(i) what should be considered is Malaysian public policy, as understood and applied by a Malaysian court.

(ii) in determining what constitutes Malaysian public policy, a Malaysian court should consider:

- (a) Malaysian law;
- (b) the policy of the law;
- (c) the policy in relation to the administration of the law;
- (d) fundamental principles of substantive and procedural law and justice;
- (e) Malaysian government policy;
- (f) Malaysian moral values;
- (g) whether the enforcement is clearly injurious to the public good;

A (h) whether the enforcement is wholly offensive to the ordinary reasonable and fully informed member of the public; and

(i) all other relevant factors prevailing in Malaysia.

[27] Having perused the cause papers and submissions of the parties, I am
B of the view that the registration and enforcement of the Singapore judgment will contravene Malaysian public policy.

Imposition Of Singapore Law On Malaysian Insurers

[28] It is to be noted that the legislative framework and policy of the RTA 1987 show the following:
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(i) the RTA 1987 imposes a mandatory statutory duty on users or owners of motor vehicles to obtain an insurance policy to cover third party risks. This duty is not imposed on insurers;

(ii) however, users or owners of motor vehicles are not compelled to insure
D against injury to passengers, except in limited circumstances which do not apply to the present case; and

(iii) therefore, passengers have to assess for themselves the risks of taking private transportation.

E (See: ss. 90(1) and 91(1) of the RTA 1987)

[29] Therefore, based on the above it is clear that:

(i) Parliament has no intention of mandating passenger cover under the RTA 1987;

F (ii) passenger cover is optional, and can be obtained by users or owners of motor vehicles, should they choose to do so; and

(iii) passengers should assess for themselves the risks of taking private transportation.

G **[30]** Given the above, if no passenger cover has been purchased by the insured, and a passenger is injured, the insurer cannot be liable under Malaysian law to compensate the passenger. It is the responsibility of the insured to compensate the passenger personally.

[31] This is the statutory position prescribed by Parliament through the
H RTA 1987, and this is the basis on which the defendant and other Malaysian insurers provide motor insurance to the public.

[32] Therefore, it is not the duty of a Malaysian insurer under Malaysian law to pay for passenger risks which the insured himself has chosen not to cover and pay an additional premium for.

I

[33] As required by BNM, the defendant placed a prominent notice on the defendant's motor insurance proposal form for all insureds, which states that compulsory passenger liability cover is required in Singapore under Chapter 189:

> It is an offence under the law of Republic of Singapore to enter the country without extending passenger liability cover to Your motor insurance.

[34] However, the insured in the present case chose not to purchase passenger cover.

[35] Therefore, I am of the view that under the RTA 1987, the defendant is not liable to compensate the injured pillion rider or repay such compensation to the plaintiff. The insured or the rider is liable for the Singapore judgment sum and the insured cannot seek an indemnity from the defendant under his policy.

[36] Further, I view that the enforcement of the Singapore judgment will effectively re-write the legislative policy behind the RTA 1987 without any Parliament-sanctioned amendments mandating passenger cover.

[37] It is the considered view of this court that the enforcement of the Singapore judgment will also contravene Malaysian public policy for the following reasons:

(i) the imposition of mandatory passenger cover is in direct conflict with the RTA 1987, which governs the entire Malaysian motor vehicle insurance industry;

(ii) it will violate the statutory freedom of choice given by the RTA 1987 to Malaysian insureds to procure passenger cover, effectively making it mandatory despite not being required by the RTA 1987;

(iii) it will set a precedent and allow the plaintiff to commence similar proceedings against all Malaysian motor insurers, regardless of whether or not insureds have taken passenger cover;

(iv) it shifts the onus of obtaining passenger cover from insureds to insurers, thereby undermining the freedom of insureds to make their own choices and potentially limiting the travel of Malaysian-registered vehicles to Singapore; and

(v) this is the exact opposite of the legislative framework and policy of the RTA 1987, and amounts to the 'backdoor' imposition of Singapore law on Malaysian motor insurers.

[38] Based on the above, it is my view that Parliament's intention for the general public to decide for themselves whether to obtain passenger cover will be undermined. Motor insurers will be forced to either reconsider

providing insurance to the general public for vehicles traveling into Singapore, or raise insurance premiums for the general public to mandatory cover passenger risks.

[39] Further, this court is of the opinion that enforcing the Singapore judgment will have drastic consequences such as the following:

(i) negligent users or owners of motor vehicles can simply sit back and refrain from obtaining passenger cover. They will effectively escape from the consequences of their actions at the expense of their insurers, given that they may not have the financial means to reimburse their insurers;

(ii) the defendant and other Malaysian motor insurers will be exposed to additional, open-ended liability that they have not bargained for. This may result in the defendant and other Malaysian insurers declining to offer motor insurance to those traveling into Singapore, which would be detrimental to them, especially if they are working in Singapore and have to travel there daily or frequently.

[40] Thus, if the Singapore judgment is enforced, it will be transposed into a Malaysian judgment and given effect, thereby imposing Singapore law on Malaysian insurers through the 'backdoor' and frustrating the legislative intent behind the RTA 1987. This, to my mind should not be allowed to happen under any circumstances.

Motor Insurance Policies Will Be Rewritten

[41] It is a fact not disputed that the insured in the present case chose not to purchase passenger cover despite being made aware of the mandatory requirement to obtain passenger cover.

[42] Since passenger cover is not part of the insurance policy, the defendant is not liable to compensate any injured passenger or pillion under the insurance policy and the RTA 1987.

[43] This is consistent with the proposition that the contractual relationship between an insurer and the insured for motor insurance is governed by the motor insurance policy and the RTA 1987. Therefore, I view that the Singapore judgment cannot rewrite the insurance policy.

[44] If the Singapore judgment is enforced, this fundamental legal principle will be contravened. Motor insurance policies will be rewritten, as the defendant and other Malaysian insurers will be bound to satisfy claims made by passengers even where the policies do not cover this risk.

[45] As a result, Malaysian insureds may simply refrain from purchasing passenger cover and paying additional premiums, since any passenger liability will automatically be borne by Malaysian insurers even in the absence of passenger cover.

The Financial Burden On Malaysian Insured

[46] This court is of the view that if the Singapore judgment is enforced in Malaysia, the defendant and other Malaysian motor insurers will be faced with open-ended and uncertain liability to compensate passengers injured in Singapore, despite the policies not covering this risk.

[47] This will result in the defendant and other Malaysian insurers raising motor insurance premiums across the board for all insureds, helping defray the additional costs incurred.

[48] In addition, BNM may require all users of Malaysian-registered motor vehicles to purchase passenger cover, just so that persons going into Singapore are covered. The effect of this will be that all users of Malaysian-registered motor vehicles will be required to pay for the relatively fewer persons going into Singapore who, despite knowing that they have to purchase passenger cover, choose to breach Singapore law by entering Singapore without passenger cover.

The Privity Of Contract Will Be Undermined

[49] To recap, when the defendant entered into the special agreement with the plaintiff in 1975, the legislative framework governing compulsory motor vehicle insurance in both Malaysia and Singapore was the same, as passenger cover was not compulsory in both countries.

[50] However, through a 1981 amendment to Chapter 88, Singapore changed its law and made passenger cover compulsory. This amendment was included in Chapter 189, which came into force on 30 March 1987.

[51] In light of Chapter 189, on 24 September 1998, the plaintiff entered into the supplemental agreement with its members in Singapore, whereby references to Chapter 88 in the MOA were replaced with Chapter 189.

[52] However, the plaintiff never asked the defendant to enter into the supplemental agreement, and the defendant's obligation was never extended to cover passenger risks in this manner.

[53] In fact, as admitted by the plaintiff, only two Malaysian insurers entered into the supplemental agreement with the plaintiff "as they were issuing motor insurance contracts in Singapore".

[54] The plaintiff further admitted that other Malaysian insurers did not enter into the supplemental agreement as "Malaysian insurers who did not have to carry out insurance business in Singapore were not required to sign the supplemental agreement".

[55] Therefore, I am of the view the enforcement of the Singapore judgment will force the defendant to abide by the terms of the supplemental agreement which the plaintiff signed with its own members (which are all Singapore motor insurers) and with two other Malaysian insurers (which transacted insurance business in Singapore), but not with the defendant.

[56] Further, it is my view that the plaintiff, through the enforcement of the Singapore judgment, should not be allowed to violate the doctrine of privity of contract and force the defendant to abide by the terms of the supplemental agreement, to which the defendant is not a party.

Plaintiff And MIBWM

[57] The plaintiff on the other hand argues that both the plaintiff and MIBWM have the same purpose and have entered into similar agreements. The plaintiff also argues that under the MOA and the special agreement, the defendant is contractually bound to pay even where there is no passenger cover. However, I find that these arguments are without basis for the following reasons:

(i) although the plaintiff was modelled on MIBWM, MIBWM has always operated against the framework of the RTO 1958 and the RTA 1987, which did not impose mandatory passenger cover (except in the case of passengers being carried for hire or reward, or by reason of or under a contract of employment);

(ii) further, under the memoranda of agreements entered into in 1992 between MIBWM and the Minister of Transport and MIBWM and Malaysian insurers respectively, MIBWM is not obliged to satisfy any judgment obtained by a third party but instead may choose to make compassionate payment; and

(iii) therefore, the regimes of MIBWM in Malaysia and the plaintiff in Singapore are different. It is incorrect to say that the positions of the plaintiff and MIBWM are the same.

The General Insurance Association Of Malaysia (PIAM)'s Circular

[58] The plaintiff further argues that the PIAM issued a circular in 1994 to Malaysian insurers, stating that they are bound by their contractual obligations under the special agreement and the MOA.

[59] However, I find that this circular is irrelevant as it does not deal with public policy issues in the enforcement of a Singapore judgment in Malaysia.

[60] Further, I find that PIAM is not the regulator of the Malaysian insurance industry. PIAM was formed to maintain tariff discipline, respond to new insurance legislation and assist with clarification and sound insurance practices. PIAM had no involvement in the special agreement, and PIAM's views in my mind certainly do not bind Malaysian insurers.

[61] Instead, the regulator of the Malaysian insurance industry is BNM, which has not issued any similar circular. (See: *Persatuan Insurans Am Malaysia (PIAM) & Ors v. Competition Commission* [2022] 9 CLJ 268; [2023] 2 MLRH 414)

Res Judicata

[62] The plaintiff argues that the defendant is barred by *res judicata* and issues estoppel, as the issues in the present case have already been decided in:

(i) the 2012 Singapore suit; and

(ii) *Motor Insurers' Bureau Of Singapore v. AmGeneral Insurance Bhd* [2020] 3 CLJ 581; [2019] MLRHU 1677; (AmGeneral Suit).

[63] The plaintiff argues that *res judicata* applies as the 2012 Singapore suit determined the same issues which the defendant is now raising in encl. 8. This argument is misconceived for the following reasons:

(i) the issue in the 2012 Singapore suit were different:

(a) enclosure 8 involves an analysis of the defendant's statutory public policy defence under s. 5(1)(a)(v) of the REJA, and the public policy consequences that flow from the enforcement of the Singapore judgment in Malaysia;

(b) these issues were not decided in the 2012 Singapore suit. This is clear from the High Court's written grounds of judgment in the 2012 Singapore suit;

(c) in fact, it would have been impossible for these issues to have been decided in the 2012 Singapore suit, as the 2012 Singapore suit did not involve the enforcement of a Singapore judgment in Malaysia, let alone the Singapore judgment which only came into existence later in 2022; and

(d) in *Syarikat Sebati Sdn Bhd v. Pengarah Jabatan Perhutanan & Anor* [2019] 3 CLJ 157; [2019] 2 MLRA 171; [2019] 2 AMR 492; [2019] 2 MLJ 689, the Federal Court held as follows:

> [52] In the premises the learned judge was correct to hold that ... the issue of *res judicata* does not apply as **the cause of action is totally different and has not been decided earlier simply because the issue did not exist earlier**.
>
> (emphasis added)

(ii) no written grounds of judgment by the Singapore Court of Appeal

(a) the plaintiff has referred to the High Court's decision in the 2012 Singapore suit having been affirmed by the Singapore Court of Appeal;

(b) however, the mere fact that the High Court's decision was affirmed on appeal does not change anything. The fact remains that the issues in encl. 8 were not determined by the 2012 Singapore suit;

A (c) in any event, the Singapore Court of Appeal did not issue written grounds of judgment. As such, the rationale behind their decision is unknown, and cannot be used as the basis for *res judicata*. (See: *Tetuan Wan Shahrizal, Hari & Co v. PP* [2023] 4 CLJ 843; [2023] 4 MLRA 11; [2023] 4 MLJ 1).

B ***AmGeneral* Suit**

[64] The plaintiff argues that *res judicata* applies since the issue of whether it is against public policy to enforce the Singapore judgment was dealt with by the Court of Appeal in the *AmGeneral* suit. However, I find that the defendant was not a party to the *AmGeneral* suit (*supra*) and therefore *res* C *judicata* cannot apply against the defendant.

[65] In the *AmGeneral* Suit (*supra*), the High Court held that the enforcement of a Singapore judgment obtained by the plaintiff against *AmGeneral* was contrary to Malaysian public policy, and that it was not just or convenient D for the Singapore judgment in that case to be enforced in Malaysia.

[66] The High Court's decision was reversed on appeal. However, the Court of Appeal did not issue written grounds of judgment. As such, the Court of Appeal's decision cannot bind either this Honourable Court or the defendant.

E (See: *Tetuan Wan Shahrizal, Hari & Co v. PP* (*supra*))

Scope Of The Statutory Public Policy Defence

[67] The plaintiff argues that public policy requires judgments from reciprocal countries under the First Schedule of the REJA, including F Singapore, to be registered and enforced in Malaysia.

[68] However, I am of the view that if the plaintiff's argument is accepted, then it would render the statutory public policy defence nugatory, as the defence can never be raised to set aside the registration of a foreign judgment under the REJA.

G **[69]** In fact, registration and enforcement of a foreign judgment under the REJA will become automatic. This is contrary to the express words of s. 5(1)(a)(v) of the REJA, which states that registration shall be set aside if enforcement contravenes Malaysian public policy.

H **[70]** This court is of the view that foreign judgments from reciprocal countries (including Singapore), while deserving of due recognition, cannot be mechanically enforced without an assessment of their alignment with Malaysian public policy.

Whether Enclosure 8 Impeaching The Merits Of The Singapore Judgment I

[71] The plaintiff argues that encl. 8 impeaches the merits of its claim under the special agreement and the MOA which resulted in the Singapore judgment.

[72] I find that the defendant's statutory public policy defence under s. 5(1)(a)(v) of the REJA pertains to the enforcement of the Singapore judgment in Malaysia.

[73] This cannot possibly amount to re-litigating the merits of the Singapore judgment, or else no defendant will ever be able to raise and argue the statutory public policy defence.

[74] Therefore, this court is of the considered view that the issues raised by the defendant are not contractual issues *per se*, but instead pertain to the public policy implications arising from the enforcement of the Singapore judgment in Malaysia.

[75] As I have mentioned above, the public policy concerns:

(i) backdoor imposition of Singapore law in Malaysia: If the Singapore judgment is enforced in Malaysia, passenger cover will in effect become mandatory in Malaysia, and negate the insured's freedom of choice;

(ii) rewriting of motor insurance policies: the enforcement of the Singapore judgment would compel Malaysian insurers to satisfy claims by passengers, even when standard insurance policies do not cover passenger risks, thus going beyond the scope of the policies and affecting the entire insurance landscape;

(iii) increased financial burden: if passenger cover is made mandatory as a result of the enforcement of the Singapore judgment, this would significantly and adversely impact the general public's financial obligations and their ability to secure coverage; and

(iv) doctrine of privity of contract: the enforcement of the Singapore judgment would undermine this fundamental legal principle, and disrupt established legal norms in Malaysia.

Conclusion

[76] Premised on the reasons above, I am of the opinion that the registration and enforcement of the Singapore judgment are contrary to the Malaysian public policy.

[77] As such, I allowed the defendant's application to set aside the Singapore judgment and order for registration (encl. 8) with costs of RM10,000 subject to the allocatur fees.